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10/645,889

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Michael P. Coppert

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8185

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02/10/2009

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EXAMINER

VU, TUAN A

ART UNIT

PAPER NUMBER

2193

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/645,889	<b>Applicant(s)</b> COPPERT, MICHAEL P.	
	<b>Examiner</b> TUAN A. VU	<b>Art Unit</b> 2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 8,10-18,24,25,27-33,39,40 and 42-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8,10-18,24,25,27-33,39,40 and 42-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/29/08</u> .   | 6) <input type="checkbox"/> Other: _____                          |

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### **DETAILED ACTION**

1. This action is responsive to the Applicant's response filed 8/29/08.

As indicated in Applicant's response, claims 8, 13, 17, 24, 29, 33, 39, 44, 48 have been amended, and claims 1-7, 9, 19-23, 26, 34-38, 41 canceled. Claims 8, 10-18, 24-25, 27-33, 39-40, 42-48 are pending in the office action.

### ***Response to Arguments***

2. Applicant's arguments filed 8/9/08 have been fully considered but they are moot in light of the new grounds of rejection which have been necessitated by the Examiner's re-consideration of the previous Office Action.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 16 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the claimed 'probe monitors the database' is not disclosed in the Disclosure for one to be ascertained that the inventor possesses this capability at the time the invention was made. The disclosure teaches metric/value, or filters are being stored in a database (Specifications: pg.4 top; *the probe accesses a value* - bottom, pg. 5) so that these can be accessed to support

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determining whether a value is acceptable. Nowhere is there a specific probe designed to monitor events of a database.

The above limitation will be treated as though the determination for acceptability of a value is based on accessing a database.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8, 10-17, 24-25, 27-29, 31-33, 39-40, 42-44, 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katayama et al, USPN: 7,017,071 (hereinafter Katayama), and further in view of Viavant et al., USPubN: 2002/0184363 (hereinafter Viavant)

**As per claim 8**, Katayama discloses a monitoring apparatus, comprising:

a message receiver at a central server having a processor (e.g. center server - Fig. 4-5) to receive a first message (Fig. 8) from a computer at a first site (user-site system – Fig. 4) wherein the computer has a probe installed therein (203d – Fig. 2; 203b - Fig. 4), the probe being configured to generate the first message and the first message including a first value for a first metric (Step 605 – Fig. 6; col. 12 lines 21-33; col. 7 line 51 to col. 8 line 19; *occurrence of a failure* - col. 9 lines 9-15; see Fig. 23, 24-27 Note: monitoring module at plug-in user site – e.g. 203d ; col. 14 lines 21-46 - to generate occurrence metric, or failure code along with message sent to center server regarding occurrences or failure code reads on first value and metric - see col. 9 line 47 to col. 10 line 4; col. 15 lines 60-67);

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Katayama does not explicitly disclose a tester at the central server to determine if the first value is acceptable, wherein the tester includes first filter defining a range of acceptable values for the first metric, and the tester is operative to compare the first value with the range of acceptable values for the first filter; and an alerter at the central server configured to provide an alert if the first value is not acceptable. Katayama discloses a specialized service established between an user device and the managing system (step S604 – Fig. 6) operating as a tester in terms of filtering information based on matching metrics against a threshold (see step 605 – Fig. 6; step 1706 – Fig. 17) leading a generating of a initial failure indicator to be communicated to and addressed by the central server managing site, whereby further analysis and resolution for the communicated indicator would be undertaken at the managing site (see Fig. 23, 24-27, Fig. 29); e.g. in terms of effectuating a ticket communicated to other repair services (see Fig 32). Analogous to the concept of having a user-side service that filters a value with respect to a range of acceptable values set against a threshold (see Viavant: para 0091-0092, pg. 8), Viavant discloses a web server to perform analysis of performance data collected from measurement instrumentation code (or probe) embedded inside user application (see Viavant: Fig. 1; Fig. 5A-B), with instrumentation handlers therein for reporting these measurements back to said server (see Viavant: para 0094-0095, pg. 8), wherein the server analyzes a response time with respect to an accepted threshold or predetermined range (Viavant: para 0190-0194, pg. 15-16; Fig. 6) based on which to send a notification for addressing the problem. Based on the similar approach whereby a filtered value is determined for enabling a managing server to send out a notification for other services to handle the failure, it would have been obvious for one skill in the art at the time the invention was made to implement Katayama's central server so that the server can also

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receive measurement metrics such as *response time* as in Viavant's approach, analyze by means of a filter as to determine whether such response metric falls inside acceptable range of values defined by said filter, and based thereupon determine how to deal with the nature of the failure as intended in Katamaya, because this would enable repair services or administrator measure to be taken to improve application performance at the client system, i.e. performance improvement implemented as in Viavant's response time checking and similarly conceived in Katayama's via use of services to validate value ranges.

**As per claim 10**, Katamaya does not explicitly disclose wherein the tester includes a plurality of filters, each filter determining a range of acceptable values for a metric; and a selector to select the first filter from the plurality of filters based on the first metric in the first message. But due to the nature of asynchronous incoming messages received at a port of a server, the likes of which construed as events in Katayama (see Fig. 13, Fig. 15), wherein those event are communicated to and arrived at the central server (see S1705, Fig. 17; Event monitor 110a – Fig 11), the plurality of threads to match arrival of asynchronous messages is indicative of a need to have message handler or analyzing threads to validate incoming measurement metrics provided from the monitoring probe at the user/client site (see Katamaya: Fig. 2, 4, 10). Based on the filtering aspect of Viavant and the need to have threads of filter to determine value ranges for acceptable metric as set forth in the rationale of claim 8, it would have been obvious for one skill in the art at the time the invention was made to implement Katamaya's central server with event handling and message filters so that a plurality thereof can be used to handle each of the metric (e.g. to determine from a range if the metric is acceptable) being extracted

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from incoming messages as taught in Katamaya's event monitor in light of the approach to improve response time by Viavant as set forth in claim 8.

**As per claim 11**, Katamaya does not explicitly disclose wherein the plurality of filters includes at least one filter defining a range of acceptable values for the first metric associated with a site; and a selector to select the first filter from the plurality of filters based on a first site in the first message. But the asynchronous creation of threads to address incoming events is suggestive of filter type based on the range of value as taught in Viavant, and the selecting of a appropriate filter at Katamaya's server (in view of Viavant) so that each is defined for a range of values would have been obvious in view of the rationale in claim 8 and the obvious server-side spawning of filters as set forth in the rationale in claim 10.

**As per claim 12**, Katamaya discloses a log, the log including an entry corresponding to the first message ( history of Failures - Fig. 22-26).

**As per claim 13**, Katamaya discloses a system for monitoring software, comprising:

- a central computer;

- a monitoring apparatus installed in the central computer, wherein the monitoring apparatus includes a message receiver (monitor 110a - Fig. 4) to receive a first message from a first site remote from the central computer, the first message including a first value for a first metric (refer to claim 8),

- a first computer at the first site (PC client - Fig. 2, 4);

- a first probe installed in the first computer to generate the first message (refer to claim 8);

- and a network connecting the central computer and the first computer (Fig. 2, 4, 9-12).

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Katamaya does not explicitly disclose a tester at the central server to determine if the first value is acceptable, and an alerter configured to provide an alert if the first value is not acceptable. But this limitation regarding validating a metric value against a range or predetermined threshold for acceptance (and thereby providing a alert) has been addressed as obvious based on Viavant, as this has been set forth in claim 8.

**As per claim 14**, Katamaya discloses a second computer; a second probe installed in the second computer (User-site: PC/Servers - Fig. 2; col. 13 li. 50-53 – Note: plurality of computers at user site reads on plurality of probe – 2<sup>nd</sup> probe - operating as PC monitoring module 203d for each); and the network connects the central computer and the second computer.

**As per claim 15**, Katamaya does not explicitly discloses wherein the first computer includes a software package and the first probe monitors the software package; but Katamaya discloses events based on software that manage computers and peripherals (e.g. software designed to manage general purpose computers – col 20 lines 20-22; col. 7 lines 51-60). Viavant discloses monitoring of events regarding browser or application content (see Viavant: Fig. 2-3, 4A-B). It would have been obvious for one skill in the art at the time the invention was made to implement the monitoring in Katamaya so that software governing general-purpose computers as well as peripherals at the user-site can include software package or application such as taught in Viavant, because this type of monitoring would help failure related to software as well as hardware to be communicated for measure to be taken at the central server, as set forth in claim 8.



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**As per claim 16**, Katamaya discloses wherein the first computer includes a database (*database 203a-1* Fig. 4); and the first probe monitors the database (Note: monitors treated as accessing a database – see USC 112, 1<sup>st</sup> rejection).

**As per claim 17**, Katamaya discloses a message generator operative to send a first message to a central site, the message including the first value (refer to claim 8) but does not explicitly disclose wherein the first probe includes a first sensor to capture a first value for a first metric. Based on the monitoring module coupled via plug-in connectivity with a user computer (see Fig. 2, 4), and the response time metric as taught in Viavant, it would have been obvious for one skill in the art at the time the invention was made to implement user-site monitoring modules or probes in Katamaya, so that these probes include a sensor that would intercept software event such as in Katamaya (refer to claim 15) and/or collect a metric such as a response time in Viavant, for the same benefits as set forth in the rationale of claim 8.

**As per claim 24**, Katamaya discloses a method for using a monitoring apparatus, comprising:

receiving a message at a central server (refer to claim 8);

determining at the central server a first value for a first metric for a computer at a first site from the message, the first site being remote from the central server and the message being generated by a probe installed on the computer (refer to claim 8);

But Katayama does not explicitly disclose determining at the central server if the first value for the first metric for the first site is acceptable; and if the first value for the first metric is not acceptable, displaying an alert at the central server that the first value for the first metric is not acceptable. But this limitation about acceptable metric determined at the server has been

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addressed in claim 18 using Viavant's accepting a response time metric; and based on Katayama's generating of a display at Katamaya's managing site (see Fig. 22, 23-27) regarding a failure code the alert notification presented to other services as a display would have been obvious in light of Viavant as set forth in claim 18.

**As per claim 25**, Katamaya does not explicitly disclose that if the first value for the first metric is acceptable, logging the first value for the first metric. But in view of the history data or master table in Katayama and referencing thereto in order to address a failure event from a user-site probe (master table, col. 21-22; History of Failures – Fig. 23; Fig. 29), the concept of persisting reference metric for use in future assessment of metric is suggested; and likewise, Viavant discloses database to use to correlate response time with versions of applications (see *relational database ... type and version* - para 0191-0195, pg. 16; Fig. 6). It would have been obvious for one skill in the art at the time the invention was made to implement Katamaya managing site database in light of Viavant so that metric are persisted and reused as reference for addressing performance deficiencies of user computers, user peripherals as in Katayama or versions of computer applications, as taught in Viavant.

**As per claims 27-28**, Katamaya, in view of Viavant, discloses wherein determining if the first value for the first metric is acceptable includes comparing the first value for the first metric with at least one acceptable value; wherein determining if the first value for the first metric is acceptable includes determining if the first value for the first metric is within a range of acceptable values (refer to the rationale of claim 8).

**As per claim 29**, Katamaya discloses wherein receiving a message includes accessing the first value for the first metric by the probe; and sending the message to the monitoring apparatus

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by the probe (Step 605 – Fig. 6; col. 12 lines 21-33; col. 7 line 51 to col. 8 line 19; *occurrence of a failure* - col. 9 lines 9-15; s Note: monitoring module at plug-in user site – e.g. 203d ; col. 14 lines 21-46 - to generate occurrence metric, or failure code along with message sent to center server regarding occurrences or failure code reads on accessing a first value and metric by a probe and sending it in message - see ee Fig. 23, 24-27; col. 9 line 47 to col. 10 line 4; col. 15 lines 60-67).

**As per claim 31**, refer to claim 15 for “accessing the first value includes accessing a software package by the probe”.

**As per claim 32**, refer to claim 16.

**As per claim 33**, Katamaya discloses wherein the message includes the first value for the first metric and an identifier for a site of the probe (see Fig. 8, 22-27 – Note: identification of user device or peripheral device reads on user-site of probe; occurrences or failure code reads on first value and metric – see claim 8).

**As per claim 39**, Katamaya discloses a computer-readable storage media containing a program to use a monitoring apparatus, the program comprising software at a server to:

receive a message (refer to claim 8); software at the server to determine a first value for a first metric for a computer at a first site from the message wherein the message is caused to be generated by a probe installed on the computer (refer to claim 8);

Katayama does not explicitly disclose software at server to determine if the first value for the first metric for the first site is acceptable; and if the first value for the first metric is not acceptable, software at the server to display an alert that the first value for the first metric is not acceptable. But this limitation has been addressed in claim 8.

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**As per claim 40**, Katayama does not explicitly disclose software to log the first value for the first metric if the first value for the first metric is acceptable; but this limitation falls under the subject matter of claim 25, hence is rejected likewise.

**As per claims 42-44**, refer to claims 27-29.

**As per claims 46-48**, refer to the rejections of respectively, claims 31, 32, 33.

7. Claims 18, 30, 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katayama et al, USPN: 7,017,071, and Viavant et al., USPubN: 2002/0184363, and further in view of Li et al, USPN: 6,813,733 (hereinafter **Li**).

**As per claim 18**, Katamaya (in view of Viavant ) does not disclose wherein the first computer includes an e-mail server to generate a message from the first probe to the monitoring apparatus.

Messages communicated between client and server as extensively used in Katamaya's NW or in the web paradigm of Viavant are well known to be electronic messages. **Li** teaches a diagnostic paradigm to monitor client application, wherein Emails are used to enable client to communicate with server about client data such as a problem report (col. 12 li. 21-46; Fig. 7). It would have been obvious for one skill in the art at the time the invention was made to implement the message communication in Katayama so that application issues as those events being monitored by application levels or peripheral devices can be communicated by Email service, because application users taking advantage of available commodities like electronic messaging would obviate resources for creating more costly form of communication with a server.

**As per claim 30**, Katamaya does not explicitly disclose wherein sending the message includes delivering the message to an e-mail server by the probe; delivering the message to the monitoring apparatus by the e-mail server. But this limitation has been addressed in claim 18.

**As per claim 45**, refer to claim 30.

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan A Vu whose telephone number is (571) 272-3735. The examiner can normally be reached on 8AM-4:30PM/Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lewis Bullock can be reached on (571)272-3759.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-3735 ( for non-official correspondence - please consult Examiner before using) or 571-273-8300 ( for official correspondence) or redirected to customer service at 571-272-3609.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/Tuan A Vu/

Primary Examiner, Art Unit 2193

February 06, 2009